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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re Z.M. et al., Persons Coming Under
the Juvenile Court Law.

B215531
(Los Angeles County Super. Ct.
No. CK75735)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

M.V.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County, Zeke Zeidler, Judge. Affirmed.

Marissa Coffey, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the County Counsel, James M. Owens, Assistant County Counsel, and Sarah Vesecky, Deputy County Counsel, for Plaintiff and Respondent.

M.V. (mother) appeals from the judgment of March 25, 2009, declaring her daughters, J.C. and Z.M., dependents of the court under Welfare and Institutions Code section 300.¹ Mother contends substantial evidence does not support the sustained allegations of the petition or the order removing Z. from her custody. We hold substantial evidence supports the findings and order, and affirm the judgment.

STATEMENT OF FACTS AND PROCEDURE

J. was born in 1994 to mother and S.C. J. lived with S.C. and paternal relatives. Z. was born in February 2008 to mother and R.M. (father) (collectively, the parents), who lived together.

Mother had a 20-year history of psychiatric disorders and hospitalizations, stemming from ongoing mental health issues diagnosed as bipolar personality disorder, schizo-affective thought disorder, depression, and mania, which rendered her incapable of caring for herself or her children and unable to work. She had suicidal ideations. She needed someone to remind her to take the psychiatric medications she was prescribed. Although she had medical insurance and a referral for mental health services, she was not in psychotherapy. When not taking her medications, she angered easily, acted aggressively, and presented manic behaviors such as not sleeping. Mother was hospitalized on numerous occasions because she did not take her medications. Fourteen-year-old J. believed mother could not provide care for Z. if she were not taking her medications.

Mother was hospitalized for two months for psychotic features in 1998, at a time when she was living with J., S.C., and J.'s paternal family. She made incoherent statements such as, "J. is dead." After a diagnosis of bipolar personality disorder was made, paternal family carefully monitored mother's psychiatric medications and never left mother alone with J. Mother's relationship with S.C. ended in 1999. J. lived with

¹ All further statutory references are to the Welfare and Institutions Code, unless otherwise indicated.

mother until 2006, when she returned to the home of S.C. and paternal family, because mother's mental illness rendered her unable to care for J.

Mother was hospitalized in a psychiatric facility on three occasions in 2008. She was hospitalized in a psychiatric facility when Z. was born and on one occasion thereafter. The family had an open case with the Department of Children and Family Services (the Department) due to mother's mental condition. Nonetheless, father left mother to care for Z. alone.

In October 2009, the family moved into the home of Mr. and Mrs. Q. Father worked Saturdays through Tuesdays, usually in double shifts. He typically left for work at 8:00 a.m. and returned at 10:30 p.m. Due to mother's mental health issues, father asked Mrs. Q. to monitor mother and Z. while he was at work.

On December 19, 2008, mother had Z. examined by a pediatrician because of a lump on Z.'s head. Mother gave no explanation for how the injury occurred. No X-ray was taken, and mother was told to return with Z. in two weeks for a follow-up.

On December 21, 2008, the parents took Z. to the emergency room with a scalp hematoma the size of a lemon on the side of her head. The parents indicated the child slept through the night. When a CT scan revealed Z.'s skull was fractured, the police were called. The injury was approximately four days old. The diagnosing doctor stated, "due to the child's age, the skull is still soft and . . . it is hard to suffer a fracture unless the impact was significant." The parents denied knowledge of when and how Z. sustained the injury. "[M]other appeared to be distracted and not concerned with the child's injuries and would add details which contradicted her initial statements." The doctor was concerned because the parents were not able to provide a mechanism for how the injury occurred.

Z. was detained from the parents' custody, and a section 300 petition was filed.

In the weeks that followed, the parents changed their stories several times regarding how Z. might have been injured. They went from not being able to provide any information with a relevant timetable, to stating Z. had fallen out of the crib a month earlier, to stating Z. fell off the couch during the week prior to the discovery of the skull

fracture. The parents reported Z. fell out of the crib because father left the side of the crib down and the parents were not watching her. They reported Z. fell off the couch when she was alone in the living room with Mr. Q., who had his back to her. Father also reported he suspected Z. fell when she was left with a babysitter in November, but he did not provide the babysitter's name or contact information.

Mother acknowledged Mrs. Q. helped her care for Z. because of her mental illness, but she believed she could appropriately care for Z. on her own. Mother had three psychiatric prescription medications, which were to be taken twice a day. She believed her behavior did not differ when she was not taking her medications.

Father stated that when they moved into the home of the Q.'s, he asked Mrs. Q. to help monitor mother and Z. while father was at work. At times, when the Q.'s went out and left mother alone with Z., father would call from work to "check in." Father had only a vague idea of mother's mental illness and denied that mother acted differently when she was not taking her medications. Father admitted to verbal and physical domestic violence with the mother of his 18-year-old son. He admitted to a continuing relationship with the mother of his second child, who lived in El Salvador.

Mr. Q. told the social worker that on December 16 he witnessed Z. fall from the couch. Mother had placed Z. there, next to the couch where Mr. Q. lay with his back to Z. Mother then went into the kitchen. Z. landed on the metal strip that separated the carpet and tile, leaving a red mark on the right side of her head. Mr. Q. stated that Z. cried for 15 minutes and then appeared normal during the rest of the day. The social worker interviewing Mr. Q. thought his story sounded rehearsed. Mr. Q. stated he did not know about mother's mental illness until after Z. was detained. He left the home a few times per week for about an hour each time. Mrs. Q. worked three days a week. Mr. Q. did not know Z. was not supposed to be left alone with mother. Father never asked him to supervise mother's care of Z.

Mrs. Q. stated she was aware mother could not be left alone to care for Z. She stated either she or her husband was with mother while mother was caring for the child.

Based upon a review of the various statements made by the parents and the Q.'s, the social worker concluded "it appears as if the roommates, with the assistance of [father], are making efforts to provide a plausible explanation for how the child could have sustained such serious injuries[.] [H]owever such plausible explanations were not provided initially to the hospital staff, LAPD, or the [social worker]. It appears, as noted in the chronology of the interviews, that as time has passed, the statements of the parents and supposed witnesses has become more and more congruent with one another, leading to the possibility that this matter has been discussed with detail among them in preparation to the subsequent interview by the [investigating social worker]." Moreover, the injuries were inconsistent with the parents' explanations. Further, the explanations concerning falling out of the crib and off of the couch involved leaving Z. unsupervised in places where she could fall and hit the ground.

The Department recommended no reunification services be offered to the parents "[d]ue to the fact Z.'s injury remains unexplained, the mother's mental illness has been left untreated, the recent referral history with similar concerns of the mother's risk to the child, and the child's young age."

On January 22, 2009, the dependency court appointed Dr. Anthony Shaw, M.D., to evaluate whether the injury was inflicted nonaccidentally. On March 8, 2009, he issued a report based on a review of the medical records and reports. The CT scan revealed a "big swelling over the left side of [the] skull. On a single cut of the CT scan there is a tiny apparent discontinuity of the parietal bone underlying the scalp swelling that may be a fracture." "[T]he historical information taken from [the] parents and [Mrs.] Q. is riddled with inconsistencies up until the most recent interviews in which [mother and the Q.'s] recall that Z. fell from a couch striking her head on the floor. . . . [I]t is concerning that [mother and Mrs. Q.] initially denied any knowledge of trauma and only in subsequent interviews recalled Z.'s fall from the couch." He concluded: "Z.'s injury consisted of a soft scalp swelling and a +/- fracture of her left parietal bond (the largest and thinnest skull bone and the one most frequently fractured in an accidental fall to a hard surface). His [*sic*] injury was minor and entirely consistent with a fall from the

couch to the tile floor beneath it in the photos I reviewed. Although I am discomfited by the evolution of the history in this case, I cannot find any other evidence to support a diagnosis of inflicted injury. The extent to which [mother] is capable of caring for Z.'s needs requires evaluation by a mental health professional.”

The dependency court declared the children dependents of the court, based on following sustained allegations under section 300, subdivisions (b) and (j). Under subdivisions (b) and (j), Z. was found suffering from a possible skull fracture and scalp hematoma/swelling for which the parents initially offered no explanation. “Such injury would not normally occur except as the result of deliberate, unreasonable and neglectful acts by the [parents] who had care and custody of the child. Such deliberate, unreasonable and neglectful acts on the part of the parents endangers the child’s physical and emotional health, safety and well being and places the child and the child’s sibling, J., at risk of physical and emotional harm, damage, danger and death.” Under subdivision (b), mother “has mental and emotional problems including a diagnosis of bipolar disorder, depression, and suicidal ideation.” On February 7, 2008, mother was hospitalized for her psychiatric condition, and due to her limitations, she is unable to provide regular care for Z. “Such mental and emotional condition on the part of the mother endangers the children’s physical and emotional health, safety and well being and places the children at risk of physical and emotional harm and damage.”

J. was placed in the home of S.C. Jurisdiction over J. was terminated with a family law order giving legal and physical custody to S.C. and granting mother visitation. Custody of Z. was taken from the parents and reunification services and visitation were ordered for them.

DISCUSSION

Substantial Evidence Supports the Findings of the Petition

Mother contends substantial evidence does not support the sustained allegations of the petition. We disagree.

“In reviewing the jurisdictional findings and the disposition, we look to see if substantial evidence, contradicted or uncontradicted, supports them. [Citation.] In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court’s determinations; and we note that issues of fact and credibility are the province of the trial court. [Citation.]” (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193.) “We do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the findings of the trial court.” (*In re Matthew S.* (1988) 201 Cal.App.3d 315, 321.)

Section 300, subdivision (b), describes, inter alia, a child who has suffered or is at substantial risk of suffering serious physical harm or illness as a result of “the failure or inability of [the] parent or guardian to adequately supervise or protect the child.” Section 300, subdivision (j), provides a basis for jurisdiction over children whose siblings have been abused or neglected or risked being abused or neglected.

A. Mother’s Mental Health

Mother contends the evidence is insufficient to support the sustained allegation that her mental illness rendered her unable to care for Z. and placed Z. at substantial risk of harm. We hold substantial evidence supports the finding.

Mother had a long history of severe mental illness and numerous psychiatric hospitalizations, including three hospitalizations within the year preceding Z.’s detention. She has presented with psychotic features. She suffered a hospitalization when Z. was

born and another one after Z. was born. She could not care for Z. when hospitalized. She did not reliably take her psychiatric medications. When not on her medications, she was unable to care for herself or her children, acted aggressively, and angered easily. Z.'s half-sibling left the home because mother's psychiatric issues rendered her unable to care for her. Mother did not understand how her behavior differed when she was not medicated. She believed she could appropriately care for Z. on her own. She failed to access mental health services that were available to her. The foregoing is substantial evidence mother's mental illness endangered Z. and placed her at risk of harm. Any agreement by Mrs. Q. to monitor mother's care of Z. did not eliminate the risk, because Mrs. Q. worked outside the home three days a week and the plan did not include monitoring mother's compliance with her medications.

B. Z.'s Skull Fracture

Mother contends the evidence is insufficient to support the sustained allegation that mother caused Z. to be injured through neglect or unreasonable acts. We hold the evidence is sufficient.

The doctor who treated Z. in the emergency room diagnosed her as having a four-day-old skull fracture and a scalp hematoma. He was of the opinion that the fracture would not have occurred unless the impact was significant. Mother did not tell the pediatrician how the injury occurred. In the emergency room, mother was distracted and unconcerned about Z.'s injuries. Her demeanor, and the fact she still could give no logical explanation for the injuries, was a matter of concern for the doctor. The fact that the parents and the Q.'s subsequently went from providing no logical explanation to coalescing around a single story of Z. falling off a couch raises an inference of an agreement to devise a uniform story to portray the injuries as accidental. Moreover, their story—that mother left Z. on a couch unsupervised and then went into another room—would support a finding that the injury occurred as a result of mother's negligent and unreasonable failure to supervise.

Substantial Evidence Supports the Removal Order

Mother contends substantial evidence does not support the order removing Z. from mother's custody. We disagree.

Section 361, subdivision (c), provides in pertinent part: "A dependent child may not be taken from the physical custody of his or her parents . . . with whom the child resides at the time the petition was initiated, unless the juvenile court finds clear and convincing evidence of any of the following circumstances listed in paragraphs (1) to (5), inclusive . . . : [¶] (1) There is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's . . . physical custody."

Mother's inability to care for Z. was based on a severe, chronic, ongoing mental illness which mother did not consistently manage with medications. Mother did not understand how her illness affected her behavior and denied her illness prevented her from caring for Z. on her own. Mother failed to access psychotherapy to support her compliance with her medications. This is substantial evidence Z. would be at substantial risk of harm in mother's custody and there were no reasonable means to protect Z. without removing her from mother's physical custody. To the extent mother argues that the Q.'s provided a safety net, the dependency court could reasonably conclude, from the evidence Mrs. Q. worked outside the home, Mr. Q. did not understand mother's illness, mother was left unsupervised while caring for Z. in the Q.'s home, and no one monitored mother's compliance with her medications, that remaining in mother's custody in the home of the Q.'s would not reasonably protect Z.

DISPOSITION

The judgment is affirmed.

KRIEGLER, J.

We concur:

TURNER, P. J.

MOSK, J.